SCHEDULE "C"

The following is an excerpt from an interview by George Barr, King's Council, with R. Rogers Smith sometime in the mid 1940's and on **"Ligue pour l'Union Federale", 822 Sherbrooke Est, Mtl**. (Acquired from the **Archives of the Province of Saskatchewan**)

A CANADIAN CONSTITUTION

Questions by G. H. Barr, King's Council

Answers by R. Rogers Smith

Mr. Barr: I understand, Mr. Smith that you have made a rather exhaustive study of our Constitutional position for some years past and have come to the conclusion that in the national interest the entire position should now be clarified?

Mr. Smith: I consider this indispensable.

Mr. Barr: I should like to ask you a few questions to get your viewpoint on various phases of the situation?

Mr. Smith: good—I am only too pleased to give you any information I have gathered from the facts of history and constitutional authorities. Also, if you desire my reasons for stating that a clarification of our constitutional position is indispensable.

Mr. Barr: What is the source, Mr. Smith, from which the authority of government in Canada originates?

Mr. Smith: In Nova Scotia, **King James VI** of Scotland granted a charter to Sir William Alexander (afterward Earl of Stirling) to the lands extending from Penchscot Maine to the St. Lawrence River, including what is now New Brunswick and Prince Edward Island. As well as a small acreage in the City of Edinburgh where Stirling Castle now stands. "This was declared Nova Scotia territory in the reign of Charles I, in order that Baronets of Nova Scotia might 'take seizin' of their lands without leaving Scotland, and is there a lawyer in Edinburgh who will deny the fact that in the eyes of his profession this bit of Scotland is really in Canada?" (In search of Scotland, 1933-by H. V. Morton). The grant was a lease with a clause for the payment of three Indian arrowheads per year. The present flag and Coat of Arms were granted in 1625 by Charles I, as King of Scotland. Nova Scotia never belonged to England then, or later. Prince Edward Island was separated from Nova Scotia and made an independent province in 1770. New Brunswick was detached from Nova Scotia and made an independent province August 16th, 1784.

Thomas Carleton was the first Governor.

In the case of Quebec - a "Constitution" was granted to Governor James Murray

November 21st, 1763, by the "Board of Trade and Plantations", signed Yorke and Yorke (see **Sessional Papers 18**). The Lords of Trade and Plantations, afterwards known as the Board of Trade and Plantations, and, finally, as the Board of Trade, received their authority from the **Crown in Chancery**. In the reign of Queen Elizabeth "Members of Her Majesty's most learned and honourable Privy Council (divers orders thereunto called) conceived and established the **Crown in Chancery** to administer affairs in connection with and exercise authority over the waste lands or commons of England". Newly discovered or conquered lands were placed under this **Department of Lands**, whose offices are at Whitehall, London. When the Treaty of Union, 1707, uniting England and Scotland, was signed, the administration of affairs in connection with Scottish land was granted to this Department.

Nova Scotia, which was now a "British" possession also, was placed under the **Crown in Chancery**. It is a common assumption that the Monarch, or the House of Commons, or House of Lords, grant authority to a Governor General. Such is not the case. **Governors General receive their authority only from the Crown in Chancery.** It is not permitted that the King, or any member of the House of Commons or Lords even suggest that anyone be appointed. The affairs of the Crown in Chancery are administered by the Sec'y of State that he be appointed. The Sec'y of State alone is responsible for the retention of a colony as a British Possession. He must not be circumscribed in any way in the exercise of his powers.

(2) Sir George Fiddes, who was Under-Secretary from 1909-1916, explains the difference between a "Governor" and a "High Commissioner".

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"The Secretary of State, broadly speaking, has no executive authority within the territorial limits of a Colony or Protectorate. His authority is exercised through the Governor (or, in the case of some protectorates, the High Commissioner) with whom he alone corresponds and to whom alone he issues his instructions."

After the Governor General is appointed by the Secretary of State "Letters Patent" are drafted and signed by Sir Claude Schuster, Clerk of the Crown in Chancery. The Secretary of State for the Colonies in Britain corresponds to a Minister of Lands in Canada. He alone is responsible for the retention of a Colony as a possession of the British people. He therefore must not be interfered with in his appointment or removal of a Governor or High Commissioner.

After the "Letters Patent" are attested, the Governor now is introduced to His Majesty at the Court of St. James, where he receives a letter of directions from His Majesty called "Instructions". If we add to the "Letters Patent" and "Instructions" the added powers granted to the Governor General in the British

North America Act, we have the same sum of dictatorship on March 23rd, 1931 as were granted to Governor James Murray by the Board of Trade and Plantations November 21st, 1763.

Mr. Barr: "What is the source from which the authority of government originates?"

Mr. Smith: It originates in the title to land. When the King was absolute Monarch, in him alone existed the Sovereign power. He could-and did-sign grants or leases for "three acorns" a year to Dukes, Lords, Earls, etc., many of which exist today. The Duke of Wellington paid his lease to His Majesty on July 6th, 1944. This was one little "silken Union flag". These are called "entailed estates". It is true that the lease granted by Queen Elizabeth to Sir Walter Raleigh was also ratified by Parliament, but it was not until Charles II ascended the Throne, that the Monarch was not the Sovereign Power. Today the King can sign a lease or enact a law "by and with the advice and consent of the Lords Temporal, Spiritual and Commons in Parliament Assembled and with the authority of the same as follows: (The King alone has no power.)

Today the **People of Britain** are Sovereign, not only over the British Isles but also all Colonies which they own.

The "Titles" to these lands are in the custody of the "**Crown in Chancery**". This is the reason we call them "**Crown Lands**".

The British people do not own Canada today.

None of the Provinces are required to pay rent. Since December 11th, 1931, the ownership to the land is held by each Province. The Legislature of each Province can make laws exclusively in connection with property and the title is held in the custody of the Department of Lands. All Provinces of Canada today are Sovereign States.

The Province does not divest itself of ownership when the Department of lands grants a title to a "homestead" in "fee simple" or "free and common soccage". It is well understood by both the purchaser and the Province that the Legislature retains the right to "tax" the land. This "tax" is the rent the purchaser pays. If a person dies intestate or fails to pay his "tax", the land reverts to the Province in the first case or is repossessed by the Province by way of a "tax" sale.

(3) The answer to your question would not be complete without the statement that: **The Sovereign right to govern originates in, nor can it be divested from the ownership of land.**

In order that "Sovereignty" be exercisable by a Central Government in Canada, it is indispensable that the Sovereign Provinces divest themselves of those powers

which they collectively desire the Central Government to administer and to "cede" to the Central Government some land, such as the District of Columbia, U. S. A.; Mexico City, District Federal of Mexico; or District of Canberra in Australia. This is called the right of "Eminent Domain".

It is admitted that England and Scotland signed a treaty uniting them on January 14th, 1707. Article 1 of the treaty states that "Her Majesty shall be requested to appoint ensigns armorial to conjoin the crosses of St. George and St. Andrew into one flag". This flag, by the way, was first flown at the celebration to commemorate the union, held in St. Paul's Cathedral, London, May 1st, 1707. Prior to this time, James Sixth of Scotland had granted a charter to Sir William Alexander-afterwards the Earl of Stirling-for New Scotland, as the King stated that "Old England" has "New" England and France has "New" France, I see no reason why Scotland should not have "New Scotland", (and used the Latin term "Nova Scotia") which extended at that time from Penchscot Maine to the St. Lawrence River, including Gaspe-what is now New Brunswick; also Prince Edward Island.

Charles I, upon coming to the throne, granted to Nova Scotia paid a lease for the lands of three Indian arrowheads per year.

It may be of interest to comment that Scotsmen were not permitted to go to an English Colony, nor were Englishmen permitted to go to a Scotch Colony. At this time there was a death penalty for a Frenchman to leave Canada to take up residence in the State of New York.

After the union of England and Scotland, the Colonies were under **the Lords of Trade and Plantations**. This was altered to the Board of Trade and plantations and finally to the **Board of Trade**.

Mr. Barr: Would it be true then to say, Mr. Smith, that at the time of the granting of Letters Patent creating the Colony of Nova Scotia, the source or power granting those letters was the Sovereign of Scotland; where then did the Board of Trade get its authority?

Mr. Smith: At the union of England and Scotland, all Scottish lands were placed with English lands in the Crown in Chancery as possessions of the British people and all Colonies, that is to say, New England and New Scotland, were placed together under this same department.

The **Crown in Chancery** delegated the administration of and the exercise of authority over the Colonies to the aforesaid **Board of Trade and Plantations**. At this time the profit from owning Colonies was attained through the Navigation Acts, which were that everything and anything-manufactured articles used in the Colonies, must be imported from Great Britain in British bottoms by British crews and anything raised in the Colonies must be trans-shipped to Britain in British bottoms and by British crews. To

make this effective, it was provided that anything exported by the Colonies to any foreign country would be regarded as contraband. But it should be noted that "the Colonists had all the privileges of Englishmen and were governed by laws of their own making". It was not until **Burke's Act was enacted in 1782-22 Geo. III Ch. 82, abolishing the authority** of the Board of Trade and Plantations and the Governors of the Colonies were told to make their returns to a committee of His Majesty's Privy Council, that the Colonial Office assumed the administration of affairs and the exercise of authority over all Colonies. Comparing the **sessional papers 18** which were granted by the Board of Trade to Murray in 1763 with the Letters Patent issued to Earl Bessborough March 23rd, 1931 with the instructions issued by His Majesty and also the British North America Act, we find this "*mutantis mutandis*" the same. Therefore I think we can agree with the statement of Judge W. H. P. Clement of the Supreme Court of British Columbia, on page 1 of his "Constitution of Canada," Third Edition, issued in 1916, as follows; "It was no part of the scheme of Confederation to alter in any essential respect Colonial relationship or to weaken the Crown's headship; and there is nothing in the (BNA) to indicate a surrender in any degree by the British Parliament of that cardinal principle of the Constitution, the supreme legislative authority of the British Parliament over and through the British Empire. Our colonial position suggests at once two lines of limitation upon Canada's power of self-government, the first that she cannot legislate as to the Imperial Constitution; and secondly that she has no power to dictate the essential framework of her own as provided in the British North America Act unless indeed that power is conveyed to her by the Act itself".

It may be said here, in passing, that Judge Clement wrote this fifteen years before the enactment of the Statute of Westminster, for the Statute of Westminster is the only enactment pertaining to Canada which has in any way altered our status since the **Sessional papers 18** were granted to James Murray in 1763.

Mr. Barr: What was the nature of the papers so granted, in brief, and to what extent were the people themselves given the power to make the laws under which they were governed?

Mr. Smith: It is admitted that James Murray was a "corporation sole" in 1763. **It is known by chapter 85 of the Revised Statutes of Canada, 1927, that the office of the governor general is a "corporation sole".**

Mr. Barr: Would it be true to say that the only charters granted for the government of Canada were these three documents, that is, the Letters Patent of Nova Scotia, **the Sessional Papers 18** to Murray, and the Letters Patent granted to Paterson for the Island of St. John which subsequently became Prince Edward Island-that these were the only authority granted up to the British North America Act of 1867?

Mr. Smith: Yes! In explanation I would like to make it clear that no papers of any kind were ever issued to any governor to come to Canada, by the King, the House of Commons, or the House of Lords. **The last papers issued to a governor to Canada**

were those granted at the time of the appointment of Earl Bessborough, March the 23rd, 1931.

These papers were granted by the **Crown in Chancery**, or **Department of Lands of Great Britain**, giving him the full authority to govern Canada. After the Governor receives his appointment, he is introduced to the King at the Court of St. James, where he is granted a letter of instructions by His Majesty. But it is not true to state that any Governor of Canada ever was a Viceroy. It will be remembered that when Lord Willingdon finished his term of office as Governor General of Canada and returned to London, he was sent by George the Fifth as his Viceroy to India and shortly after his arrival he knighted three princes of India "Sir".

Mr. Barr: Has any change taken place in the appointment of Governor General since the passing of the Statute of Westminster?

Mr. Smith: No governor general since the enactment of the Statute of Westminster has received any papers from the Crown in Chancery of Great Britain to act as Governor General in Canada.

Mr. Barr: I understand the successor to Bessborough was John Buchan, afterwards Lord Tweedsmuir. How was he appointed?

Mr. Smith: Lord Tweedsmuir has a commission, signed by R. B. Bennett, which was never Gazetted in the Canada Gazette. This is the only paper extant in connection with Lord Tweedsmuir's appointment to Canada.

Mr. Barr: How was Mr. Bennett appointed?

Mr. Smith: It should be understood that Mr. Bennett was made a member of His Majesty's Imperial Privy Council' that acting in this capacity he could commission a governor general but he could not grant any papers to him to govern Canada. (a commission without authority).

Mr. Barr: Is it true that the present governor general of Canada is in exactly the same position in regard to the authority he purports to exercise as Lord Tweedsmuir was?

Mr. Smith: He is!

Mr. Barr: Who signed the commission for the Earl of Athlone?

Mr. Smith: The minister of justice in a letter dated July 10th, 1940, states that his excellency the Earl of Athlone came to Canada not in the capacity of Viceroy of His Majesty, except in the popular sense of the term, and-----he is not the agent or representative of His Majesty's Government in Great Britain or any Department of that Government.

Mr. Barr: Under what authority does he purport to act? It is inconceivable to me that a man would purport to exercise the authority of Governor General unless he has some document or title or written authority from some person having the power to give him such authority to act in that capacity. What has the Earl of Athlone?

Mr. Smith: This is a prevalent assumption and one which should be definitely refuted. There is no record anywhere of the Earl of Athlone having received any authorization from the Crown in Chancery to act as Governor General of Canada. It might be opportune to request of the Earl of Athlone a copy of the credentials under which he purports to act before recognizing any Lieutenant Governor which he may appoint for this Province. Now I would like to explain further that since Canada is no longer under the Department of Lands of Great Britain **since the enactment of the Statute of Westminster, that they are not in a position to grant any powers to anyone to act as the governor general of Canada.**

Since that date, the British Government sent to Canada a British High Commissioner, the present incumbent, the Rt Hon. Malcolm MacDonald.

In explanation I would say that before 1931 we had four British High Commissioners for the empire, one for Palestine, for Singapore, for the Islands of the Pacific and for Basutoland. There is no higher office within the competency of the Secretary of State of Great Britain to confer higher than that of High Commissioner. These men could order an attack by the British Army or the British Navy within the orbit of their authority (jurisdiction). High Commissioners are sent to Protectorates of the British Empire which are not Colonies. Their powers greatly exceed the powers of Governor General. It might be interesting, in passing, to comment that if no enactment or order in Council is valid without the assent of some representative of the British Government, the orders in Council passed since the Statute of Westminster should have been assented to by the British High Commissioner at Earnscliffe instead of being assented to by a purported Governor General at Rideau hall.

Going to the next phase of the discussion, let us enumerate the various individuals, groups, institutions, or officers under which the Government of Canada is carried on. Prior to the enactment of the Statute of Westminster, the Government of Canada was composed of a Governor General and a Select Committee of His Majesty's Imperial Privy Council. Three of this committee are resident in London and administer affairs in connection with foreign relationships. Two of this committee functioned in the House of Commons, two in the Senate; one headed the Supreme Court of Canada and two other, namely Sir William Thomas White and Dr. T. J. McNamara were available to act as Chairman of any Royal commission.

Mr. Barr: Who appoints these parties to the Imperial Privy Council for Canada and how are they paid?

Mr. Smith: They are appointed by His Majesty and of the 319 members who compose the Imperial Privy Council for the Empire the lowest remuneration that they are eligible to receive is 2,000 pounds per year.

Mr. Barr: Who are the present occupants of those positions for Canada resident in London?

Mr. Smith: Lord Beaverbrook, Lord Greenwood and Lord (R. B.) Bennett. In the House of Commons of Canada we had the Rt. Hon. W. L. MacKenzie King; in the Senate the Rt. Hon. Arthur (15 minutes of fame) Meighen and Rt. Hon. George Graham. In the supreme court, Sir Lyman P. Duff.

Mr. Barr: Who of these parties are still functioning?

Mr. Smith: The three in London and the Rt. Hon. MacKenzie King in Canada. The others who are not actually exercising an office in Canada are still members of the Government of Canada by virtue of being members of the **Imperial Privy Council for Canada**, all of whose names are to be found in the parliamentary guide. There would appear to be an anomaly here; for instance, in the case of Arthur Meighen, he is no longer a member of the House of Commons or the Senate of Canada but he is still listed as a member of the **Imperial Privy Council** and since no man in Canada can occupy that position unless he is a member of one of these bodies, he is by virtue of the appointment which has never been revoked technically a member of the Government of Canada although not holding any elected position.

Mr. Barr: Is there not a Canadian Privy Council as well as the Imperial Privy Council for Canada?

Mr. Smith: There is! This council is nominally composed of around 150 members -150 members of whom are summoned and appointed by the governor general and members thereof may be from time to time removed by the governor general. In order to ascertain how many are appointed and how many are removed from time to time, compare the list in 1935 with the present list.

Mr. Barr: What will that disclose?

Mr. Smith: It would at least disclose that the Duke of Windsor was a member in 1935 and was removed from the Privy Council by Lord Tweedsmuir.

Mr. Barr: Is it true then that men were appointed to and removed from this important body without reference to any elective authority in Canada?

Mr. Smith: Yes! Although it is the practice for the governor general to summon and appoint the heads of what is commonly know as the “cabinet”. To make myself clearer-suppose that the C. C. F. were elected with a majority in Canada, a number of those-

around18-would be summonsed and appointed by the governor general to form a cabinet.

Mr. Barr: To make it clear, you speak of 18 forming a cabinet. Is the cabinet a separate and distinct body from that called the government, men who are the minister of the crown?

Mr. Smith: A distinction should be drawn between government and parliament. The governor general is the governor of Canada. The House of Commons and the Senate of Canada, and the Privy Council for Canada, as well as the Lieutenant Governors of the Provinces and the Legislatures of the Provinces were to aid and advise the governor general in the government. It may be said that all of these bodies were members of different standing in a kind of “Ladies Aid” for their constituted powers are no greater than the powers that the Ladies Aid are able to exercise as a body of the United Church. House of Commons, being the elected representatives of the people. It should be held in mind that the House of Commons are elected by and only by British subjects. These words “British subject” occur 11 times in the Elections Act. Anybody not admitting to be a British subject can be challenged at the polls.

Mr. Barr: Can it be said then that the House of Commons is elected not by all the Canadian people because there are Canadians who do not qualify as British subjects, people actually born in Canada? Does not this indicate, Mr. Smith, that there should be something to establish the status of the Canadian citizen in order that he, in that capacity, may vote to elect his own Parliament? Is it not true that on the taking of the census, it has been repeatedly stated, and the enumerators are instructed not to list any person as a Canadian citizen, or one of Canadian nationality because there is no such thing? Is not that true?

Mr. Smith: Yes! Census takers are instructed not to accept the answer “Canadian”.

Mr. Barr: So that we have no Canadian citizenship? No Canadian nationality and no Canadian flag?

Mr. Smith: Insofar as Canadian citizenship and Canadian nationality are concerned, you are correct, but we have what may be said to be a Canadian flag, on which was granted in 1625 by Charles I to the only territory in Canada at that time under the British monarch, namely, **Nova Scotia**, which I have previously explained took in what is now “Gaspe, New Brunswick, and Prince Edward Island, as well as the present Province of Nova Scotia”, and for this reason we cannot say that the Maritimes have no flag, and I think if the colonists in Quebec, after the **Capitulation of 1763**, had stated that they would fly the flag which had been granted to the Maritimes, I cannot conceive of the Imperial authorities having any objection.

THE SENATE:

Mr. Smith: Certain men who are qualified by property and standing in their community may be from time to time summonsed and appointed as Senators by the Governor General. He shall, subject to the provisions of the B. N. A. Act, hold his place in the Senate for life. If a vacancy happens by resignation, death or otherwise, the Governor General shall by summons to a fit and qualified person fill the vacancy and the Governor General may from time to time, by instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate and may remove him and appoint another in his stead.

Mr. Barr: As part of the House of Commons we have the Government or Cabinet Ministers or Ministers of the Crown, each of whom is given the power to administer the affairs of a certain department. Just what, in brief? How are they constituted?

Mr. Smith: It should be remembered that in this connection Canada was a Dominion and "a Dominion" is defined by Lord Thring in **Section 18, para. 3**, of the **Interpretations Act (Imperial)** as follows;

"The expression "Colony" shall mean any of her Majesty's Dominions (exclusive of the British islands and British India) and where parts of such Dominions are under both a Central Legislature and Local Legislatures, all parts under the Central Legislature shall, for the purpose of this definition, ***be deemed to be one colony****"*

So that, in answer to your question, I would say that the Cabinet of the House of Commons, or any members of the House of Commons, have no more power or authority than have the members of any Legislative Assembly of any of the British Colonies. The function of a Legislature of a Colony is to aid and advise the **Governor General**, ***who is the government***, and the Cabinet is to administer affairs in any department to which he is appointed by the Governor General. But it cannot be remotely said that either the Legislative Assembly of Canada nor the House of Commons of Canada, are responsible to the Canadian people-**they are responsible only to the Governor General**.

Mr. Barr: Am I to take it from what you say that they have no power to make laws? It is recognized by both the House of Commons, the Senate as well as the Legislatures of the Provinces, they cannot enact any measure unless it is assented to by the Governor General or by the Lieutenant Governor of a Legislature-as the case may be. So that while they may introduce legislation and enact laws, such laws do not become effective or, in fact, become law until they receive such assent?

Mr. Smith: You are correct! But I would like to draw to your attention to: "It shall not be lawful for the house of Commons to adopt or pass any vote, resolution, address or Bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to that House by message of the

Governor General in the session in which such vote, resolution, address, or Bill is proposed"- **Section 54, of the British North America Act.**

Mr. Barr: In common practice, that is expressed something as follows: "**all money-bills-must originate with the government**". So that, insofar as the expenditure of public money is concerned, it **originates with the Governor General** and can only become effective after passing the House and the Senate and the Assent of the Governor General?

Mr. Smith: Correct! – Only the salary of the Governor General is the first charge against the **Consolidated Revenues of Canada** after the expenses of collection are paid. His salary amounts to $48,666.66 per year and expenses. This is the fact in this regard as given by the Auditor General of Canada.

PRIME MINISTER OF CANADA

Mr. Barr: Just how is he appointed?

Mr. Smith: The present incumbent is elected from Prince Albert and receives an indemnity of $4,000.00 per year. After being called upon to form a government by the Governor General, he receives $15,000.00 per year as being the member of the King's Privy Council for Canada, holding the recognized position of **First Minister**.

Mr. Barr: Who pays the $15,000.00?

Mr. Smith: Canada pays that on the orders of the Governor General. (**Salaries Act**-cap. 186 Revised Statutes of Canada).

PROVINCIAL LEGISLATURES:

Mr. Barr: How are they constituted?

Mr. Smith: The Legislature of the Province is composed of the Lieutenant Governor and elected members.

Mr. Barr: How is the Lieutenant Governor appointed?

Mr. Smith: The Lieutenant governor appointed solely **by the Governor General**.

Mr. Barr: Is he obliged to comply with any request or submit his suggestions or receive advice from elected representatives?

Mr. Smith: **No!** As the Governor General **was** a "**corporation sole**" for the Central Legislature of Canada, the Lieutenant governor is equally a "**corporation sole**" in the legislature of each Province. **His powers are to act as the representative of the Governor General** and he has all powers necessary to carry on the government of the

Province. There is, of course, no such thing as second Chamber or Senate in the Provinces except in the Province of Quebec where they have in addition to the Legislative Assembly a Legislative Council appointed by the Lieutenant Governor.

Mr. Barr: Consisting of how many members?

Mr. Smith: I think it is 24. I would not be sure.

Mr. Barr: What functions do they exercise in Quebec?

Mr. Smith: Much the same functions as the Senate exercises in Ottawa.

PROVINCIAL CABINET OR GOVERNMENT:

Mr. Barr: How is this constituted?

Mr. Smith: The Cabinet of the Province is constituted in much the same manner as is the Cabinet at Ottawa.

Mr. Barr: The Premier of the Province-he is appointed by whom?

Mr. Smith: He is appointed to his position by the Lieutenant Governor and exercises the same functions within his jurisdiction as the **Dominion Prime Minister** within his. He must subscribe to an oath of office to the Lieutenant Governor before assuming such office.

Mr. Barr: Jurisdiction of the various Provinces-groups-committees-jurisdiction of the Governor General?

Mr. Smith: We find these powers and authorities set forth in **Letters Patent**, the last of which were granted, as I have said before, to Earl Bessborough March 23rd., 1931. Canada Gazette, Oct. 12th., or 19th., of 1935. You will find there a proclamation issued by Sir Lyman P. Duff which tells you that he is acting as the Governor General of Canada and that he is to swear in the Governor General under letters Patent of June 15th., 1905. **These had been revoked in 1931 by the Crown in Chancery under Letters Patent dated March 23rd., 1931**.

He can “do and execute, in due manner, all things that shall belong to his said office, and to the Trust We have reposed in him, according to the several powers and authorities granted or appointed him by virtue of “the British North America Act, 1867” and of these present **Letters Patent** and of such Commission as may be issued to him under Our Sign Manual and Signet, and according to such instructions and may from time to time be given to him under Our Sign manual and Signet and to such Laws as are or shall hereafter be in force in Our said Dominion”. He is authorized to use the Great Seal for sealing all things whatsoever that shall pass the said Great Seal. He has the appointment of all judges and justices of the peace. He can suspend or

remove from office any person exercising any office within our said Dominion, under or by virtue of and Commission or Warrant which may be granted by Us in Our name or under Our authority. He can summon and dissolve the Dominion Parliament. He can appoint deputies of himself to exercise or administer any powers which he may have-or less powers if the Governor General so desires. He appoints all officers of the Army, Navy, Air Force, Harbour Commissioners, and any office in Our said Dominion. All these officers are required and commanded, both civil and military, and all of the inhabitants of Our said Dominion to be obedient, to aid and assist Our said Governor General, or in the event of his death, incapacity or absence to obey such person or persons as may from time to time under the provisions of these Our ***Letters Patent*** administer the government of our said Dominion. (See: **Statutes of Canada** (second session) 21-22 Geo. V Parts I-II, p. xix.)

Summing up—it will doubtless be conceded that it was not logical for the British to grant General James Murray less than a dictatorship if they held him responsible for the retention of the **Colony of Canada** as a possession. No dictatorship could be granted more inclusive of power than the constitution of the **Colony of Quebec** granted by the Board of Trade. **Today**, if we add the letters Patent granted to Earl Bessborough March 23rd., 1931; the Instructions issued by his Majesty; the Colonial Laws Validity Act of 1865, and the British North America Act 1867-1930 together and divide by common sense, we get exactly the same mathematical quotient as we find in the constitution granted to Murray November 21st., 1763, published in **Sessional Papers 18.**

DOMINION HOUSE OF COMMONS-CONSTITUTION AND JURISDICTION

Mr. Barr: The Constitution is settled by Sections 37 to 57 of the British North America Act, 1867. These provide, in brief, the constitution of a House of 181 Members to be summoned, called together and prorogued from time to time by the Governor General. What would you say, Mr. Smith, is the jurisdiction or authority of the House of Commons?

Mr. Smith: Before answering your question, I would like it to be understood that the House of Commons is constituted of a Speaker and a body of elected Members. The Speaker is appointed by the Governor General and is one of the Presidents of the Parliament of Canada, the other being the Speaker of the Senate. The Rt. Hon. W. L. MacKenzie King is a Vice-President of the Parliament of Canada and the Leader of the Opposition also a Vice-President. **There is no office of Prime Minister**. Once only has the term “Prime Minister” been used in the statute. (**See Debates in the House April 10th., 1935, Hansard. P. 2509**). It may be said here that the House of Commons, together with the Senate and the King’s Privy Council for Canada, are an ancillary body to aid and advise the governor General in the government of Canada.

Mr. Barr: This hardly coincides, Mr. Smith, with the conception of the average citizen of Canada. What comment have you to make in that regard?

Mr. Smith: It is only in the popular sense of the term that the present incumbent, Rt. Hon. MacKenzie King is given the courtesy title of "Prime Minister". Naturally, if Canada were a democracy, we would have a Prime Minster and a House which would make the laws of Canada and whose enactments could not be disallowed by the British Government, or any department of that Government. The popular conception of the Government of Canada is a variance with the facts. The situation was brought to the attention of the House by W. F. Kuhl, the Member for Jasper-Edson, Alberta, and has from time to time been brought to the attention of the public, but to this date no remedy has been offered for this anomalous situation. Based upon the British North America Act of 1867, the House of Commons has been given jurisdiction over certain matters as set forth in section 91, and subject to the approval of the Senate and the assent of the Governor General, the Bills passed by the housed form the **Statue Law of Canada**. It will be noted, in passing, that no Bill involving the expenditure of public money may be introduced or initiated except by the Governor General in Council.

Mr. Barr: The Senate, Constitution and Jurisdiction?

Mr. Smith: I would say that probable the Senate is constituted as a brake on the enactments of the House of Commons to revise and correct any mistakes that may be made. Sometimes their efforts have been conducive to uniformity, but it is a moot question as to whether the Senate itself serves any useful purpose. It is entirely an appointment by the Governor General and the qualifications of the person to be appointed to the Senate appear to be more of a property qualification than of his personal ability. The Speaker of the Senate is the President of the Parliament of Canada and that he is entirely under the influence of the Governor General may be realized by reading **Section 34 of the British North America Act**, as follows;

"The Governor General may from time to time, by instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his stead".

Mr. Barr: The Imperial Privy Council-jurisdiction, functions and authority. What, Mr. Smith, is their authority, or what is their jurisdiction?

Mr. Smith: It may be said that the Imperial Privy Council for Canada is a body delegated by the British Government to carry on the executive government of Canada. Three members of this council **reside in London** - Lord Beaverbrook, Lord Greenwood and Lord Bennett. Their functions are to administer matters in relation to Canadian Foreign Affairs. Those residing in Canada had certain duties and acts to perform, such as the administration of the affairs of Canada in the absence of the Governor General. This particular duty was exercised by Sir Lyman P. Duff. The

duties of the Rt. Hon. MacKenzie-King are to act as one of the **Vice-Presidents of the parliament of Canada**; to warn of any impending legislation by the parliament of Canada which would interfere with the rule of the Governor General and also to scrutinize any enactments emanating in Provincial legislatures. It is necessary to appoint a Chairman of a Royal Commission, the R. Hon. William Thomas White could serve on such a commission or to regiment the people of Canada into a straitjacket by the formation of a **Selective Service for Canada**. Dr. T. J. McNamara, another member, would carry out the orders of the British Government. At the present time, if you will consult the parliamentary Guide, you will find only 9 members of His Majesty's Privy Council.

Mr. Barr: The King's Privy Council - jurisdiciton?

Mr. Smith: The King's privy Council for Canada is constituted by the Governor General. The method is set forth in **Section 11 of the British North America Act**, as follows;

"There shall be a Council to aid and advise in the government of Canada, to be styled the Queen's Privy Council for Canada; and the persons who are to be members of that Council shall be from time to time chosen and summoned by the Governor General and sworn in as privy councilors; and members thereof may be from time to time removed by the Governor General".

Mr. Barr: What are their functions and jurisdiction, Mr. Smith?

Mr. Smith: The jurisdiction and functions of the King's Privy Council for Canada may be said to be that of an ancillary body, similar to the Ladies Aid of the United Church. The Ladies Aid of the United Church advise the Moderator and I think have as much influence in the activities of the United Church as the King's Privy Council for Canada have in connection with the government of Canada.

Mr. Barr: Would it be true then, Mr. Smith, to say that their function is purely advisory? They have no executive authority at all?

Mr. Smith: Their function is purely advisory for the reason that if they, or any of them, were to attempt to impose their ideas upon the Governor General, the Governor General has the power to remove them and appoint another in his stead.

Mr. Barr: In common practice, what do they do? Does not the Governor General act upon the advice of his Cabinet, which is a part of the privy Council?

Mr. Smith: I will answer your question, Mr. Barr, by asking you a question. If it came to matters of real importance, would you not, even if you were a dictator, take the advice of your Cabinet?

Mr. Barr: That would likely be the course anyone would take. But would it be fair

then to say that in common practice in Canada as it has developed, the Governor General is supposed by the average man to act on the advice of that portion of the Privy Council constituting the Cabinet for the time being, but legally if it came to an issue as between what the representatives of the people wanted on the one hand and what the Governor General felt was necessary on the other in the matter of Imperial policy, his viewpoint would prevail in spite of the recommendations of the privy Council or any members thereof?

Mr. Smith: The popular conception is that the Governor General acts upon the advice of his Privy Council for Canada but I know of many instances in Ottawa where the Governor General has acted without consulting any of the members of His Majesty's Privy Council or of the King's Privy Council for Canada—using his prerogative which is given in **Section 12 of the British North America Act** -that he may act individually as the case requires.

Mr. Barr: If required, could you give specific instances, Mr. Smith, to prove this statement?

Mr. Smith: I could.

CABINET JURISDICTION

Mr. Smith: The Cabinet consists of what are commonly spoken of "Minister of the Crown", each with a portfolio, having charge of certain departments of Government. The Cabinet, with the Prime Minister, are generally spoken of as "the Government", as distinct from the House of Commons itself.

Mr. Barr: What is their jurisdiction Mr. Smith?

Mr. Smith: Individually each member of the Cabinet is given a specific task to perform. They are chosen and appointed to their positions by the Governor General and are generally elected members. But it will be remembered that after the election of 1935 Mr. Dunning was appointed as Minister of Finance before he had a seat as an elected member of the House of Commons. Any of their acts in the performance of their duties may be nullified by the Governor General or the member may be removed from office. As an instance of this, the R. Hon. MacKenzie King was removed by Lord Byng and Arthur Meighen appointed to his position of the **First Minister of the King's Privy Council for Canada.**

PROVINCIAL LEGISLATURE

Mr. Barr: Jurisdiction?

Mr. Smith: The Provincial Legislature is of course elected by the people and under the British North America Act, Section 92, has jurisdiction over certain specific matters

supposed to be of local concern and interest. The same procedure and authority within its competence is largely the same as that exercised by the Dominion House of Commons within its competence.

The Legislature of the Province is composed of a Lieutenant Governor and elected members, varying in the different Provinces as to number. Contrary to popular conception, the Lieutenant Governor is the more important part of the Legislature. **The members of the Legislature may enact a measure but it does not become law until assented to by the Lieutenant Governor**. It has not been long since the Clerk of the Alberta Legislature arose in the house and said that **"His Honour the Lieutenant Governor doth reserve these Bills for the signification of His Excellency the Governor General's pleasure thereon".** No other action but this was taken. The members of the Alberta Legislature, assuming that Lord Tweedsmuir was a duly authorized Governor General appointed by Great Britain and that no enactment made by them would be considered law unless it were assented to by some appointee in the Government of Great Britain, thought that their Act had been disallowed but no specific action was ever taken in relation to those Bills as can be verified by consulting the Canada Gazette. In explanation, I may say that it would be necessary for the disallowance of an Act of the Legislature by the Governor General, that some proclamation be published in the Canada Gazette before such Bill could be disallowed.

Mr. Barr: In connection with these three bills then, Mr. Smith, as I understand it, the Lieutenant Governor, having received no reply from the Governor General, never assented to the Bills so that they really never became law?

Mr. Smith: That is correct. The Lieutenant governor of the province is to all intents and purposes the "alter ego" of the Governor General.

PROVINCIAL CABINET

Mr. Barr: Their function and jurisdiction within the sphere of competence under the British North America Act is practically the same as that of the Dominion Cabinet within its sphere or competence.

What, in your opinion, was the effect on Canada's status of the Statute of Westminster, Mr. Smith?

Mr. Smith: The Statute of Westminster has altered the status of each and every Province of Canada.

Section 11 of the Statute of Westminster raises each Province of Canada from the position of a Colony to that of a sovereign state.

Section 11 is as follows;

"Meaning of "Colony" in future acts. Notwithstanding anything in the Interpretation Act, 1889, the expression "Colony" shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a dominion or any Province or State forming part of a Dominion".

As there is no intermediate status between that of a Colony and a sovereign state and any Province of Canada is no longer a Colony, **they must, of necessity, be sovereign states** as they come within the requirements set for the in **Section 11**.

Mr. Barr: You are aware of course, Mr. Smith, that under **Section 7, subsection (1)** the benefit of the Statute of Westminster insofar as the Dominion itself is concerned, is withheld, that is, the provisions of **Section 2** in regard to the **Colonial Laws Validity Act** do not apply to the British North America Act. Consequently the dominion Government cannot repeal or amend any portion of that Act. Is it not fair to say then that insofar as the Dominion is concerned, the Statute of Westminster left us in exactly the same position as we were before, that is insofar as the Dominion Parliament is concerned.

Mr. Smith: The answer is no! **The British North America Act is a statute of the Imperial Parliament creating an ancillary body to aid and advise the Governor General and it could only be effective if there is a duly appointed Governor General for Canada.**

As no person receives any credentials from the **Crown in Chancery** to act as Governor General of Canada, we may, if we choose, disregard the British North America Act.

As **Section 7, para. 2**, grants to each Province individually those powers which were granted to the Commonwealth of Australia, the Union of South Africa, the Irish Free State, new Zealand and Newfoundland, **the Provinces of Canada can either assert themselves as sovereign states** or they may mutually agree to create a union of the Provinces.

Mr. Barr: What, if any, difference is there in respect to the appointment of a Governor General in Canada since the passing of the Statue of Westminster?

Mr. Smith: In answering your question, I may say, without fear of contradiction, that since the enactment of the Statute of Westminster, **no Governor General has been dispatched to Canada by the British Government**, or any department of that Government. Instead of a governor General, we now have a British High Commissioner, the present incumbent of that office being the Rt. Hon. Malcolm MacDonald, whose address is Earnscliffe, Ottawa.

By way of preliminary to answering this question, the following statement is illuminating:

*The debate on the **Quebec Resolutions, October 10, 1864**, in the Legislature of Upper and Lower Canada ended by ratification March 13th, 1865. Immediately the Imperial Parliament countered the move by enacting the **Colonial laws Validity Act**, **June 29th, 1865**, to show the Colonists that it was they and not the Colonial Legislature that had the power to govern. Revising the draft and briefing the Quebec Resolutions in the form of a Bill, called the **Kingdom of Canada papers**, John A. MacDonald and delegates from Canada, Nova Scotia and New Brunswick, presented these to the Earl of Carnarvon, **Secretary for the Colonies, December 26th, 1866**. Instead of bluntly refusing, the Earl of Carnarvon delegated Lord Thring parliamentary Secretary to the Treasury to draft a Bill to conform as much as possible to the Kingdom of Canada draft-but to nullify its purpose by not disturbing in any particular the authority of the Governor General to act as a dictator. John A. MacDonald got a wife, a title, and a membership in His Majesty's Imperial Privy Council and **Canada got the British North America Act, (Letters Patent)**.*

1767: The Island of St. John was granted to proprietors and re-named "Prince Edward Island".

1770: Prince Edward Island was separated from Nova Scotia. A Constitution was granted to Walter Patterson. This is the only constitution document in the Archives of Prince Edward Island.

Mr. Barr: Under these circumstances, Mr. Smith, what would your recommendation be to the Canadian people in order to remove this anomaly and establish a Government that would be the sovereign authority?

Mr. Smith: In my opinion, the logical solution is a Federal Union of the Provinces. It is illogical for us to decry disunity in Canada before a union has been achieved.

The definition of a Federal Union, as given in the Law Dictionary, is a "union of sovereign states mutually adopting a Constitution."

There can be no coercion in the construction of a mutually adopted Constitution. It is ony by co-operating that Nationhood can be made a reality. Lord Campbell, Leader of the Opposition in the House of Lords when the Earl of Carnarvon Introduced the Bill -

The British North America Act- said:

"*It would scarcely be possible to break the artificial unity we now propose to organize".*

(Hansard's Parliamentary Debates, Vol. 185. p. 1016)

The Colonies composing Canada were stuck together by the British North America Act. Nova Scotia objected in the strongest terms. The Colony appointed a delegation, headed by **Joseph Howe**, to present a petition to Parliament, signed by 30,000 voters of Nova Scotia: "That Nova Scotia be relieved of this measure, or that a commission of inquiry be appointed". **John Bright** presented this petition to the House of Commons. It was rejected, the vote being 183 to 87. Nova Scotia was compelled to become a member of **the United Colony**. Howe, in his departing speech, said: "We go home to share the perils of our native land in whose service we consider it an honour to labour and whose fortunes in this darkest hour of her history it would be cowardice to desert".

To "adhere" does not mean to "cohere".

To be stuck together may have been the best expedient at the time. Today the position is intolerable. **Each Province of Canada is a sovereign state**.

No sovereign state can coerce another sovereign state except by force of arms. What does the future hold?

Is Canada to become an armed camp, each at the other's throat? Or can we unite to create a federal Union, mutually adopting a Constitution, each respecting the autonomous powers the others desire to retain? This is the question which must be answered.

Sovereignty and the ownership of land go hand in hand.

In this respect I would like to draw a distinction between **POSSESSION** and **OWNERSHIP**. The slave may possess his Physical body which his master owns. Colonists may possess lands which are owned by some Sovereign state. They are in the position of share-croppers. As there is no intermediate state between that of a Free Man and a Slave, neither is there an intermediate state between a Colony and a Sovereign State. They are either one or the other.

If Canada were not a Colony in 1931, Section 11 of the Statute of Westminster would be superfluous.

Section 11 reads as follows;

"Notwithstanding anything in the Interpretations Act 1889, the expression "Colony" shall not in any Act by the parliament of the United Kingdom passed after the commencement of this Act include a Dominion or any Province or State forming part of a Dominion."

This is in unequivocal terms-states that **after December 11th, 1931**, **each Province**

of Canada, previously cognized as Colonies are now recognized as Sovereign States.

They are no longer share-croppers, nor do they pay any lease to the Crown in Chancery or Department of Lands of Great Britain. **They own the land**. Only the owner of land can make the law of the land.

Sovereignty and the ownership of land go hand in hand.

This is the most important axiom to be learned by the student of constitutional and International law. Although all property within the boundaries of a Province belongs to the Province and is possessed by the Provinces, there is nothing in the Act to intimate that the Province owns the land.

From the signing of the **Peace of Paris, 1763**, whereby France ceded the land to the British, Britain owned the land, **until Britain ceded the land to each respective Province in the Statute of Westminster, 1931**.

Possibly I can explain this by an analogy with which you are familiar. The Gypsies or Romanies have roamed Europe for a thousand years. As a people they do not own property. As a nation they have no sovereign rights The self-styled Jews also claim to be a Nation. In support of this contention, they publish a magazine called “The Nation”. As a people they do not own property or land. **As a Nation they have no Sovereign rights**.

As a consequence, they have become the football of every nation which owns land. The ownership of land entails responsibility. Responsibility is the basis of all law, whether such law be civil, criminal, corporation, municipal, or International. This is the reason that although the Dominion could and did draft laws, it was only the owner (by delegated power to Governor General) that could enact it. The same held good in the province. The Provincial legislature could draft laws, but it was only the Lieutenant Governor (by delegated power from the Governor General) who could enact it. **No power has been conferred or granted by the previous owner of the land of Canada to any person to enact laws**, **pass Orders-in-Council, administer affairs in connection with or to exercise authority over anything in Canada since 1931.**

They naturally expected the owners to look after their own property.

It is admitted that Canada needs a strong central government.

The question is-how can this be consummated? It is obvious that the only alternative is an agreement signed by the owners of the land, **the Provinces**. If the sovereign states of England and Scotland had refused to sign the Treaty of Union January 14th, 1707, there would be no Great Britain. If it was a good thing for England and Scotland to sign an agreement, or for the United States, Mexico, Australia and

South Africa, would it not be wise for Canada to follow their example? Such an agreement, signed by the representatives of the Provinces, should grant to the Central Government all essential services, with the powers of taxation to defray the expenses of such services. At the same time the rights of the Provinces should be safe guarded. No encroachment should be tolerated which would interfere with the powers and rights reserved by the Provinces. Each government must stay within its own field.

Such agreement should be free of ambiguity or any party considerations. Being fair to all, it will not overlook the rights of any. It is hardly fair for our public men to decry disunity in Canada before the first step towards unity has been taken. Our first step should be the convening of an Inter-Provincial Conference, where "Articles of Confederation" can be discussed. This need not be a lengthy document. An agreement to grant to a Central Government approximately the same powers as are contained in Section 91 of the B. N. A. act.

After signing this agreement, **which would constitute a provisional government, measures should be taken for convening a Constitutional Assembly**. To create a Constitution, it must be finally ratified by the electorate of the Provinces. As it will doubtless be conceded that an agreement is indispensable, I am handing you a draft of the "**Articles of Confederation**" and will predict that the names of the men whose signatures are appended will be re-echoed down the Corridors of Time by countless generations yet unborn, as long as the rivers flow and the grasses grow.

ARTICLES OF CONFEDERATION

WHEREAS the best interests and present and future prosperity of British North America will be promoted by a Federal Union. We, the undersigned, Premiers of the Provinces of Canada in conference assembled, in order to provide a means to implement this resolution do hereby Constitute a provincial Government composed of two appointed representatives from each Province to provide for the Peace, Order, and Good Government of Canada with the power to call an election which shall be held within sixty days after a Constitution has been created by a Conference and ratified by the electorate of each and all the provinces.

The Provisional Government shall have full power and shall exercise authority over the following functions:

The Public Debt and Property.
The Regulation of Trade and Commerce.
The Raising of Money by any Mode or System of Indirect Taxation.
Postal Service.
Census and Statistics.
Militia, Military, and Naval Service and Defense.
the fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.

Beacons, Buoys, Lighthouses and Sable Island.
Navigation and Shipping.
Quarantine and the Establishment and Maintenance of Marine Hospitals.
Sea Coast, and Inland Fisheries.
Interprovincial and International means of Transportation and Communication.
Bank of Canada and issuance of Coinage.
Weights and Measures.
Billso fo Exchange and promissory Notes.
legal tender backed by gold.
Bankruptcy and Insolvency.
Patents of Invention and Discovery.
Copyrights.
Indians and Land reserved for Indians.
Naturalization and Aliens.
Advisors to His Majesty.
The Criminal Law.
The Establishment Maintenance and Management of Penitentiaries.
The appointment of Superior, District and County Court Judges.
The Appointing and Despatching of Commissioners and Ambassadors to foreign Countries.
the governing and developing of areas or natural resources in Canada outside the boundaries of any Province.
Radio, Wireless Stations and Cables.
Aeroplanes and Air Transportation.
Immigration and Customs.
The production and reduction of Radium, Uranium and rare metals.
The exportation or importation of any Commodity.
External affairs and Great Seal of Canada.

Signed for the Province of

British Columbia _____

Alberta _____

Saskatchewan _____

Manitoba _____